

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 298 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI and
MR.JUSTICE KUNDAN SINGH

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

COMMISSIONER OF INCOME-TAX

Versus

DEEPAK FAMILY TRUST NO.1

Appearance:

MR Mihir Joshi for Mr. MANISH R BHATT for Petitioner
SERVED BY RPAD - (N) for Respondent No. 1

CORAM : MR.JUSTICE R.K.ABICHANDANI and
MR.JUSTICE KUNDAN SINGH

Date of decision: 15/04/98

ORAL JUDGEMENT

(Per R.K.Abichandani,J)

The Income-tax Appellate Tribunal has referred the following question for the opinion of this

Court under section 256(1) of the Act.

"Whether, the Appellate Tribunal is right in law and on facts in directing the Income-tax Officer to adopt the status of the assessee as individual instead of AIP and to grant the relief under section 80L of the Income-tax Act, 1961 ?"

2. The Assessee is a Trust and had made a claim of deduction under section 80L of the Act in the assessment year 1986-87. The ITO rejected that claim on the ground that status in which the assessee was liable to be assessed was that of AOP, while deduction under section 80L could be claimed only by an individual or HUF. The CIT (Appeals) held that the status of the assessee would be that of an individual and therefore, deduction under section 80L was allowable. The Tribunal confirmed that decision. In assessee's own case, similar question had arisen in respect of a different assessment year. A Division Bench of this Court in its decision reported in CIT vs. Deepak Family Trust, reported in 211, ITR 575 came to the conclusion that the representative assessee in case of a discretionary Trust must be regarded as an individual and would be entitled to the benefit of deductions under section 80 of the Act. Following the said decision in assessee's own case, we hold that the Tribunal was right in coming to the conclusion that the assessee was to be treated as an individual and was therefore, entitled to the relief under section 80L of the Act. The question referred is answered accordingly in the affirmative against Revenue. The Reference stands disposed of with no order as to costs. ...